

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC.CIVIL APPLICATION No 194 of 1999

in

FIRST APPEAL No 1141 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

=====

AGARIA OSMAN ALARKHA

Versus

SANGAR AMIN HUSEN

Appearance:

MS SONAL H PUJARA for Petitioner
NOTICE SERVED for Respondent No. 1
MR YS MANKAD for Respondent No. 2
MR SA BAQUI for Respondent No. 3
MR PR NANAVATI for Respondent No. 4
NOTICE UNSERVED for Respondent No. 5

CORAM : MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

Date of decision: 10/08/1999

ORAL ORDER

1. After dictation of the order on 23.7.1999 while considering the draft transcription and verifying the reference made in the Miscellaneous Civil Application No. 2044 of 1988, referred to in the judgment and decree passed by this Court in First Appeal on 10.11.1998 some confusion has arisen as to the actual order operating against the respondent No.3 during the pendency of appeal, therefore, matter was placed back on the hearing board.

2. It transpired that M.C.A. No. 2044 of 1988 has wrongly been mentioned in the copy attached along with the Miscellaneous Civil Application No. 2044 of 1998 wherever the true Number of Miscellaneous Civil Application which was moved by the appellants in First Appeal No. 1141 of 1989 was Miscellaneous Civil Application No. 2044 of 1998 in which the court by its order dated 17.9.1998 has directed in the first instance interim relief in terms of para 4(b) of the said Application which reads as under:

4(b) "Pending admission, hearing and final disposal of this application be pleased to restrain the opponents from taking the boat Al Amin former name MSV DWARKA out of the shore of Mandvi port by issuing necessary directions to the Mandvi port authorities/Maritime Board till final disposal of F.A. No. 1141 of 1989."

3. After an adjournment was sought by learned counsel for respondents Nos. 1, 2 and 3 on 13.10.1998, that order was confirmed on 14.10.1998. This court in earlier order passed in First Appeal on 10.10.1996 has permitted the respondents to ply their boat for their own business but restrained them from taking the boat outside the territory for the purpose of alienation, was modified during pendency of First Appeal itself and the prohibition against taking the boat outside Mandvi was made in absolute terms. Since we made order on 23.7.1999 a reply has also been filed alleging that respondent No.3 did not know of the order dated 10.11.1998 as according to the affidavit it was not served on respondent No.3. It was also pointed out by learned counsel for the respondent that in terms the order dismissing the appeal restrained the appellants but not restrained the respondents from plying their boat outside the territorial waters of Mandvi.

4. We are of the opinion that this reply with explanation lacks bonafide. Firstly, if the respondents did not know the order dated 10.11.1998 then he cannot plead the knowledge about the dismissal of appeal inasmuch as the order injuncting the respondents to take the boat outside Mandvi territory for the post-dismissal period was part of the judgment and decree made in the First Appeal and was not an independent separate order passed on a different application. It was in fact an order made at the request of appellant for continuance of the existing order made on M.C.A. 2044 of 1998 which as pointed out by us above clearly goes to show that the respondents were absolutely restrained from taking the

boat outside the territorial waters of Mandvi for any purpose, on 17.9.98 by way of interim relief and there after by order dated 14.10.1998 the interim relief was confirmed in the presence of the learned counsel for the parties. It is not the case of the respondents that respondents did not know about the operative order during the pendency of the appeal. If they had the knowledge about dismissal of appeal, it cannot be reasonably presumed that while lawyer would have informed about dismissal of appeal but would have not informed about the injunction. If there is no knowledge about the order dated 10.11.1998 at all, then they must be presumed to be acting with the knowledge of existing order dated 17.9.1998 as confirmed on 14.10.1998 and respondents were already under restraint order from removing their boat outside Indian territory of Mandvi port.

5. The plea of learned counsel that the order in First Appeal in fact reads 'appellant' and is not meant for respondents is on the face of it without any substance. The reference to 'appellant' in the context to anyone will appear to be inadvertent. Firstly, respondents plead ignorance about the order, therefore, it cannot be believed that because of the use of word 'appellant' in paragraph 15 of the order he was misled cannot be accepted. If he was aware about the order and it is inadvertent discrepancy in the order we are of the opinion nobody would have been misled by the reading of the order that it was meant for appellants and not for the respondents. That also belies the stand taken by the respondent that he had no knowledge about the order dated 10.11.98.

Thus viewed, we are of the view that the order passed on 23.7.1999 should remain intact. The order passed on 23.7.1999 remains in force. However the period of suspension of sentence for eight weeks shall be computed from this order. This order may be treated as addenda to the order dated 23.7.1999.

(Rajesh Balia,J) (A.R. Dave, J)